

Notice of Allowability

Applicati n No.

09/710,262

Examiner

Kathleen M Kerr

Applicant(s)

ROSENBERG ET AL.

Art Unit

1652

-- The MAILING DATE of this communication appears n the cover sheet with the c rrespondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 10/30/03.
2. ☒ The allowed claim(s) is/are 1,4-8 and 14.
3. ☒ The drawings filed on 30 October 2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No. _____.
 - (b) ☐ including changes required by the proposed drawing correction filed _____, which has been approved by the Examiner.
 - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the margin according to 37 CFR 1.121(d).

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|--|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892) | 5 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6 <input type="checkbox"/> Interview Summary (PTO-413), Paper No. _____ |
| 3 <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No. _____ | 7 <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9 <input type="checkbox"/> Other |

DETAILED ACTION

Application Status

1. In response to the previous Office action, a non-Final rejection mailed on August 12, 2003, Applicants filed a response and amendment received on October 30, 2003. Said amendment cancelled Claims 2, 3, 10, and 12 and amended Claims 1, 4, 5, 11, 13, and 14. Thus, Claims 1, 4, 5-9, 11, and 13-16 are pending in the instant Office action. Claims 9 and 15-16 are withdrawn from consideration as non-elected invention and remain as such. Claims 1, 4, 5-8, 11, 13, and 14 will be examined herein.

Priority

2. As previously noted, the instant application is granted priority for the continuation of U.S. non-Provisional Application No. 09/240,537 filed January 29, 1999.

Drawings

3. By virtue of the amended drawing filed on October 30, 2003, wherein the margins were corrected, the drawings have been approved by the Draftsman and are considered formal and ready for publication upon the indication of allowable subject matter.

Withdrawn - Objections to the Specification

4. Previous objection to the specification because the title is not descriptive is withdrawn by virtue of Applicants' amendment.

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5. Previous objection to the Abstract for not completely describing the disclosed subject matter is withdrawn by virtue of Applicants' amendment.
6. Previous objection to the specification for lacking continuity data in the first paragraph is withdrawn by virtue of Applicants' amendment.
7. Previous objection to the specification for discrepancies is withdrawn by virtue of Applicants' amendment.
8. Previous objection to the specification for the removal of useful information in pages 11-21, which was the originally intended sequence listing, is withdrawn by virtue of Applicants' amendment inserting a Table to include this helpful information.
9. Previous objection to the specification for being confusing with respect to the sequence listing is withdrawn by virtue of Applicants' amendment.
10. Previous objection to the amendment filed November 6, 2002 under 35 U.S.C. § 132 because it introduces new matter into the disclosure, specifically relating to the sequence listing, is withdrawn by virtue of Applicants' explanation of the discrepancy.

Withdrawn - Objections to the Claims

11. Previous objection of Claims 1-8 and 1-14 for containing non-elected subject matter is withdrawn by virtue of Applicants' amendment.

Withdrawn - Claim Rejections - 35 U.S.C. § 112

12. Previous rejection of Claims 2-8 and 10-14 under 35 U.S.C. § 112, second paragraph, as being indefinite for the phrase “as set forth in and one of” is withdrawn by virtue of Applicants’ amendment.

13. Previous rejection of Claim 8 under 35 U.S.C. § 112, second paragraph, as being indefinite for the term “encoded polypeptide” is withdrawn by virtue of Applicants’ amendment.

14. Previous rejection of Claims 10-14 under 35 U.S.C. § 112, second paragraph, as being indefinite for their requiring the DNA of Claim 7 is withdrawn by virtue of Applicants’ amendment.

15. Previous rejection of Claims 11-12 under 35 U.S.C. § 112, second paragraph, as being indefinite for the term “suitable” is withdrawn by virtue of Applicants’ amendment.

EXAMINER’S AMENDMENT

16. An Examiner’s amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 C.F.R. § 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner’s amendment was given in a telephone interview with Sol Sheinbein on January 12, 2004.

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Amendments to the Claims

17. The claims have been amended as follows:

a) Cancel Claims 9, 11, 13, and 15-16.

Conclusion

18. Claims 1, 4-8, and 14 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen M Kerr whose telephone number is (703) 305-1229.

The examiner can normally be reached on Monday through Friday, from 9:00am to 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapura Achutamurthy can be reached on (703) 308-3804. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.



PONNATHAPU ACHUTAMURTHY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600



Kathleen M Kerr
Examiner
Art Unit 1652

January 9, 2004